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DE RUEHBUL #0463/01 0611109  
ZNR UUUUU ZZH  
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FM AMEMBASSY KABUL  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 7567  
INFO RUCNAFG/AFGHANISTAN COLLECTIVE  
RUEHZG/NATO EU COLLECTIVE

UNCLAS SECTION 01 OF 03 KABUL 000463

DEPT FOR SCA/FO, SCA/RA, SCA/A, AND L  
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SUBJECT: New Regulations for Private Security Companies are  
Problematic

REF: Kabul 00106

¶1. (SBU) Summary: The Government of Afghanistan (GoIRA) has issued new private security company (PSC) regulations that, if enforced, could jeopardize the ability of the USG, the U.S. military, and the international community to operate in Afghanistan. Under the new regulations, PSCs are limited to 500 weapons-carrying employees. Companies with larger numbers of armed personnel can receive permanent licenses and fulfill and extend current contracts but cannot sign new contracts until their numbers of armed staff drop to 500 or less. Clients seeking protective services - including the USG - could be required to either hire a smaller (and generally less reliable) PSC or use the Ministry of Interior's (MoI) new protective force, which is not yet viable. In addition, the licensing fees are excessive, discriminatory, and possibly in violation of bilateral agreements. We have proposed bilateral consultations to resolve these issues as soon as possible and request the Department's guidance on the legal implications of the proposed fees. (See paragraph 6 for guidance request.)

NEW REGULATIONS COMPROMISE SECURITY, ARE DISCRIMINATORY, AND MAY VIOLATE BILATERAL AGREEMENTS

¶2. (SBU) On February 2, the Afghan cabinet agreed to license the 39 private security companies that had completed their applications by the May 2008 deadline. The cabinet also approved a set of regulations governing PSC operations and a schedule of fees. The Embassy had encouraged the GoIRA to finalize the registration and regulations to ensure the bona fides of PSCs operating in Afghanistan and to give legal protections to legitimate companies. (The uncertain legal status of PSCs left them vulnerable to arbitrary searches and seizures, which by January had escalated to dangerous levels. See reftel.) Here are the key elements of the regulations:

#### Personnel Cap

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In general, PSCs may employ no more than 500 armed personnel. Companies exceeding that number may receive permanent licenses but may not increase their current armed staffing level. They may fulfill and extend current contracts, provided this does not entail increasing armed staff, but may not sign new contracts until the number of armed staff drops to 500 or below. When clients seek new business from a PSC with more than 500 armed staff, the PSC may either "pass a contract" to a PSC with fewer than 500 staff or guide the prospective client to fee-based security services to be offered by MOI's nascent "Public Guard Force," which is not subject to the 500-man cap.

#### Fees

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Afghan PSC International PSC

License (annual) USD 60,000 USD 120,000  
Weapons registration (annual, per weapon) USD 150 USD 250  
Vehicles (annual, per vehicle) USD 400 USD 600

Other fees are to be determined for ballistics testing, biometric testing, and for vehicles with tinted windows.

¶3. (SBU) In their current form, these regulations are seriously flawed and would hinder the ability of the USG and U.S. military - and other international actors - from carrying out core activities, including assistance programs that benefit the GoIRA. The employment cap limits the freedom to select the private security provider that best meets U.S. quality standards for force protection and timeliness of service provision. The MoI's Public Guard Force is still in its infancy and is not ready to meet demand for quality protective services. The MOI's Public Guard Force is unlikely to be vetted to the degree that the USG can reliably entrust them to provide protective security to USG agents and contractors. Without sufficient numbers of vetted, well-trained and disciplined security personnel, many programs could be forced to stop work.

¶4. (SBU) The differential fees charged to foreign and Afghan PSCs are discriminatory and at best weakly associated with any service provided by the GoIRA. They appear primarily aimed at revenue generation - a cost that would ultimately be passed on to the USG. In addition to revenue generation, the regulations seem to have the protectionist aim of forcing business toward a state-owned security company that potentially will not meet the minimum standards required to provide USG protective services. Preliminary examination suggests that the fees violate bilateral agreements

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governing DOD assistance and possibly INL's as well. The USAID Legal Advisor at Post together with the USAID Office of General Counsel reviewed the USAID Strategic Objective Grant Agreements with the GoIRA and determined that there is no wording specifically exempting contractors from professional licensing fees (or fees generally). Therefore, the only agreement-based recourse may be to argue that the fees above a certain level effectively constitute a tax either directly or indirectly since the fees cannot be justified as reasonable based on specific services rendered.

#### THE WAY FORWARD

¶5. (SBU) We have informed the GoIRA of our concerns and have requested consultations as soon as possible. The text of the Charge's letter of February 26 to Interior Minister Atmar is copied in para 7 below. We intend to oppose the fees and the personnel cap as onerous, unreasonable, and incompatible with our security requirements. We will seek agreement with the GoIRA on ways to implement the PSC regulations that meet our mutual needs. We will cite bilateral agreements where useful, since the fees are an unreasonable amount and therefore effectively a tax. U.S. companies active in Afghanistan -- both PSCs and others that hire them - have raised concerns about the regulations and broadly support the Mission's course described here.

#### GUIDANCE REQUEST

¶6. (U) We request the Department's legal guidance on whether the proposed fees for licensing of the PSCs and their weapons and vehicles violate existing bilateral agreements with the Department of Defense, USAID, and INL. We anticipate bilateral talks will begin within the next 10 days and request the Department's advice as soon as possible.

¶7. (SBU) Text of Charge Dell's February 26 letter to Interior Minister Atmar follows:

His Excellency  
Mohammad Hanif Atmar  
Minister of Interior Affairs  
Islamic Republic of Afghanistan

Dear Minister Atmar,

I am writing in regard to the Cabinet decision of February 2, 2009, concerning licensing of private security contractors (PSCs) and the related regulations you have issued.

As you know, the U.S. government has long sought greater clarity in the regulatory environment in which PSCs operate. In that respect, we welcome the Cabinet's decision to allow the permanent licensing of 39 PSCs, several of which provide vital security services to the U.S. Mission, the U.S. military, and U.S.-funded assistance projects. At the same time, the content of some of the regulations presents serious difficulties for the safe and effective continuation of the activities for which these companies provide security.

For example, the bar on future growth of armed staff of PSCs that currently employ more than 500 armed staff represents a severe constraint on these firms' ability to provide security according to the quality standards U.S. government and military clients require. U.S. government clients cannot contract with any security firm whose guards have not met acceptable vetting processes, experience requirements, and training levels. The bar would therefore constrain our ability to secure the U.S. Mission and to implement numerous assistance programs that benefit the government of Afghanistan, including programs now being planned to provide election security. The attached list includes just a few examples of projects now being competed that would entail significant staff increases for the successful contractors. Implementation of the Cabinet decision and regulations would make it impossible to execute these and other projects.

In addition, the various fees to be charged to permanently licensed PSCs appear excessive, discriminatory, and at best weakly related to the provision of any service to them. Such fees certainly violate the principle that foreign assistance funding should only be used for the purposes for which it was intended, and may well violate one or more bilateral agreements granting exemption from taxes and/or fees to U.S. assistance programs.

In view of these concerns, I would like to propose that our governments commence bilateral consultations with the aim of agreeing on ways to implement the new PSC regulations that meet our

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mutual interest in both a sound regulatory framework for PSC operations and effective continuation of the various programs PSC services make possible. If you support this proposal, the U.S. Mission will designate experts to consult with their Afghan counterparts at your side's earliest convenience.

The U.S. goal in such consultations would be to reach agreement with your government on mutually acceptable terms for permanent licensing as soon as possible. Pending such agreement, I understand that the PSCs approved to receive permanent licenses retain valid temporary licenses that should allow them to continue to conduct their business without hindrance. Depending on the progress of our consultations, extension of the temporary licenses may be necessary.

Given that the fees mandated by the regulations should be a topic for our consultations, I would respectfully request that your government suspend the assessment of fees on PSCs with which the U.S. government and military contract, pending the outcome of those consultations.

Thank you for your consideration of this proposal. I look forward to hearing from you.

Sincerely,

Ambassador Christopher W. Dell  
Chargé d'affaires a.i.

Attachment: Pending project contracts

cc: Mr. Mohammad Masoom Stanekzai, Advisor to the President  
DELL